

Building public trust: transnationals in the community

Big business and poor communities can make for an uneasy fit. Transnational corporations in oil, gas and mining, for instance, have come under fire from civil society organisations for adverse impacts on local environment and livelihoods. With international pressure for a solution growing, a number of these corporations are working towards inbuilt accountability. As the experience of some shows, corporate grievance and redress mechanisms can fill the gap left by weak governance structures in host countries. Yet will this ensure true accountability and, if so, how likely is it that TNCs will embrace them as good practice?



Policy pointers

- **In countries where** governance is weak, transnational corporations can enhance their accountability by setting up their own grievance and redress mechanisms.
- **There is growing international** pressure – for example, through project finance requirements – for TNCs to establish such procedures.
- **The oil, gas and mining** industries lead in this area.
- **A real lack of awareness** and understanding persists in many parts of the business community about how such mechanisms can mitigate and resolve conflicts with local communities.
- **While some TNCs are** waking up to the value of these mechanisms, the practice remains fairly new and largely untested – pointing to the need for in-depth research on good practice through case-study evaluation.

Building in accountability

For many low- and middle-income countries, foreign direct investment is an economic mainstay, and a heavy reliance on transnational corporations (TNCs) to exploit their natural resources is the norm. But TNCs can have mixed impacts on environment and society, and their public accountability for pollution, pressure on local economies and other negative outcomes may be scant. This can result from a combination of their economic clout and the often weak governance and civil society structures in host countries. If TNCs are given special legal privileges and immunities, the problem can be compounded.

Corporate structures tend to be complex. The parent TNC may be based in one country, while operating in another as an entity that is registered in a third (frequently 'offshore') country. This can mean that a TNC's home state may lack the territorial jurisdiction allowing them

to regulate the activities of subsidiaries based abroad. At the same time, the state hosting the subsidiaries may lack jurisdiction over the parent company where crucial decisions are made.

The only formal mechanisms that allow citizens to challenge TNCs are generally those available under the domestic legislation and legal procedures of the host country. However, courts and tribunals in developing countries and emerging economies can be inefficient and reluctant to interfere with a TNC's operational activities.

Most TNCs, however, see a strong 'business case' in heading off conflict with communities, as such clashes can be damaging to their reputation, involve a loss of operational time, and put future investment opportunities at risk. TNCs' need to comply with formal requirements of project finance and international certification initiatives

Corporate drivers of accountability

There is no global regulatory system for TNCs, but instead, an array of voluntary standards and corporate social responsibility initiatives. These include the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and sector-specific initiatives such as the Extractive Industries Transparency Initiative (EITI). Among others, the environmental management standard ISO 14001 of the International Organization for Standardization and the Forest Stewardship Council both require a certified company to have its own mechanism for resolving community grievances.

Since 2006 the International Finance Corporation, the private sector investment arm of the World Bank

Group, requires clients that receive project finance to 'set up and administer mechanisms or procedures to address project-related grievances or complaints from people in the affected communities'.¹ The mechanism should address concerns promptly, using a culturally appropriate, accessible and transparent process.² The Environmental and Social Policy of the European Bank for Reconstruction and Development requires a 'mechanism, process or procedure to receive and facilitate resolution of stakeholders' concerns and grievances about the client's environmental and social performance'.

Projects that affect indigenous peoples or result in the resettlement of communities must have an additional appeal mechanism.³

is another incentive. So increasingly, TNCs see the benefit of establishing their own mechanisms for addressing local citizens' grievances.

Gauging grievance mechanisms

Corporate grievance and redress mechanisms provide communities with appropriate channels of communication to make their concerns known to the company as they arise, and provide for formalised procedures to settle these disputes. This may include a telephone hotline and a network of community liaison officers. A formal mechanism will have an internal company procedure for logging and addressing the complaints, with dedicated staff and often a stated timeframe (for example, 20 days) to resolve the issue. There may be a special committee or arbitration panel to deal with particularly complex issues; and an opportunity for third party mediation. The complainant generally signs a formal statement when the grievance is resolved to their satisfaction.

To what extent are TNCs aware of and/or using their own grievance mechanisms? To probe this question, a survey was sent out to more than 160 companies.⁴ The results were supplemented by semi-formal telephone interviews.

Twenty-eight TNCs responded, from a range of business sectors: oil and gas (5), mining (5), forestry (4), retail (4), food production (3), financial and other services (3), construction and industrial materials (3) and chemicals (1). A slight majority (16) indicated they had established some form of complaint procedure. However, four of these said their general customer information or whistleblower procedures served this purpose.

Twelve indicated they had procedures allowing local communities to complain about the social and environmental impacts of their activities. Five were fairly informal, requiring staff to record and respond to complaints, raised through community advisory panels, telephone hotlines or in connection with the general project-related public consultations. Others (7) suggested their company policy required a higher degree of formality

comprising different procedural stages and guarantees, as well as the possibility of involving third parties in dispute settlement. All seven were involved in oil, gas and mining. To date, these mechanisms have only been set up in relation to specific projects. None of the respondents had a corporation-wide system, although one TNC is now contemplating setting one up.

There is usually some corporate guidance on establishing a mechanism but in most cases techniques and approaches are still being developed and little information is available on them. Some respondents noted that a formal grievance procedure was no guarantee for avoiding conflict and should be considered as part of a wider range of community engagement measures.

Respondents characterised their complaint procedures as either 'very useful' (8) or 'sometimes useful' (3) in conflict resolution, but it will take time – and structured monitoring activities – to develop effective tools for sensitive engagement with communities.

Several TNCs in retail, food and service said they saw no point in establishing such mechanisms, as they did 'not operate directly in other countries' and had 'no direct community contact'. They would rather apply a set of conditions that their locally operating contractual partners have to comply with. This illustrates a certain difference of approach and perception in comparison to the extractive industry where up to 90 per cent of the oil and gas related activities are outsourced.

A minority (5) indicated a lack of previous awareness of community complaint procedures. Others stated that establishing them was 'too difficult', that they preferred 'ad hoc solutions' or other ways of reaching 'fair and mutually agreeable solutions', or that 'the area was still under discussion'.

This survey provides the initial starting point for further in-depth case-study work on this topic.

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Further reading & websites

CAO. 2008. *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*. CAO, Washington DC. See www.cao-ombudsman.org. ■ Palmer, A. 2003. *Community Redress and Multinational Enterprises*. FIELD, London. See www.field.org.uk. ■ Rees, C., and Vermijs, D. *Mapping Grievance Mechanisms in the Business and Human Rights Arena*. Corporate Social Responsibility Initiative Report No. 28. Harvard Kennedy School, Cambridge, Massachusetts. See www.hks.harvard.edu/m-rcbg/CSRI/index.html. ■ Ruggie, J. 2008. Protect, Respect and Remedy: A framework for business and human rights. See <http://ideas.repec.org/a/tpr/inntgg/v3y2008i2p189-212.html> ■ BASESwiki (web portal for sharing information about non-judicial grievance mechanisms around the world): www.reports-and-materials.org/Non-judicial-remedies-BASESwiki-launch-Dec-2008.doc.

Notes

■ ¹ IFC. 2006. Policy on Social and Environmental Sustainability, paragraph 31. See [www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/\\$FILE/SustainabilityPolicy.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_SocEnvSustainability2006/$FILE/SustainabilityPolicy.pdf). ■ ² IFC. 2006. Performance Standard 1, Social and Environmental Assessment and Management Systems, paragraph 23. See [www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS1/\\$FILE/PS_1_SocEnvAssessmentMgmt.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/pol_PerformanceStandards2006_PS1/$FILE/PS_1_SocEnvAssessmentMgmt.pdf) ■ ³ EBRD. 2008. Environmental and Social Policy. Performance Requirement 10, paragraphs 24-26. See www.ebrd.com/about/policies/enviro/policy/2008policy.pdf. ■ ⁴ Many thanks to the UN Global Compact (www.unglobalcompact.org/) and The Forests Dialogue (www.theforestdialogue.org/) for assistance with the survey.

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